

Michael W. McKelleb, Esq. SBN 12040
ANGIUS & TERRY LLP
9127 W. Russell Road, Ste. 220
Las Vegas, NV 89148
Telephone: (702) 990-2017
Facsimile: (702) 990-2018
mmckelleb@angius-terry.com
Attorneys for Defendants
ESPLANADE AT DAMONTE RANCH HOA

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BANK OF AMERICA, N.A.,)	Case No. 3:16-CV-00120
)	
Plaintiff,)	
)	
v.)	
)	
ESPLANADE AT DAMONTE RANCH)	
HOMEOWNERS' ASSOCIATION; ATC)	
ASSESSMENT COLLECTION GROUP;)	
THUNDER PROPERTIES, INC.,)	
)	
Defendants.)	

**STIPULATION AND ORDER FOR DISMISSAL OF PLAINTIFF'S MONETARY
CLAIMS AGAINST DEFENDANT ESPLANADE AT DAMONTE RANCH AND
ESPLANADE AT DAMONTE RANCH HOMEOWNER'S ASSOCIATION'S
COUNTERCLAIMS AGAINST PLAINTIFF**

COMES NOW, Defendant ESPLANADE AT DAMONTE RANCH HOMEOWNERS
ASSOCIATION ("**Esplanade**"), by and through its counsel, ANGIUS & TERRY LLP, and
plaintiff, BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME
LOANS SERVICING, LP ("**BANA**"), by and through its counsel, AKERMAN, LLP, and
hereby stipulate and agree as follows:

1 1. **WHEREAS**, BANA filed its Complaint in this matter on March 1, 2016 (ECF
2 No. 1), asserting claims against Esplanade for: i) declaratory relief; ii) quiet title; iii) breach of
3 NRS 116.1113; and iv) wrongful foreclosure;

4 2. **WHEREAS**, Esplanade filed its counterclaims against BANA in this matter on
5 April 3, 2018 (ECF No. 54), asserting claims against BANA for: i) fraudulent
6 misrepresentation; ii) intentional interference with prospective business advantage; iii)
7 negligent performance of an undertaking; iv) abuse of process; v) civil conspiracy; and vi)
8 breach of the covenant of good faith and fair dealing.

9 3. **WHEREAS**, Esplanade having reviewed BANA's complaint in relation to its
10 declaratory relief and quiet title claims and determined that other than ongoing obligations
11 under certain Conditions Covenants and Restrictions ("**CC&Rs**") that run with the land,
12 Esplanade has no present interest in the property which is the subject of this action, and
13 therefore no interest in this matter, including any interest in any determination this Court may
14 make in relation to declaratory relief and/or quiet title, except that a determination of this
15 Court has the potential to result in the renewal of previously held rights; nevertheless,
16 Esplanade claims no current interest, title, or rights in relation to the subject property, except
17 as otherwise specified above;

18 4. **WHERAS**, to the extent Esplanade may have any legally recognized current
19 interest, right, or title in relation to BANA's causes of action and/or claim(s) for quiet title and
20 declaratory relief, Esplanade hereby disclaims any right, interest, or title, and therefore
21 disclaims any interest in any determination, order, and/or judgment this Court may issue in
22 relation to BANA's quiet title and/or declaratory relief causes of action;

23 5. **WHEREAS** the foregoing notwithstanding, Esplanade acknowledges and
24 agrees that even though it disclaims any interest, right, or title in relation to BANA's causes of
25 action for quiet title and declaratory relief, Esplanade nevertheless agrees it shall be bound by
26 any determination, order, and/or judgment this Court may issue in relation to said claims;
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1 6. **WHEREAS**, BANA, having reviewed the foregoing, agrees and verifies that it
2 does not seek monetary relief from Esplanade in relation to its causes of action for quiet title
3 and declaratory relief against Esplanade;

4 7. **WHEREAS**, BANA also has alternative claims against Esplanade for
5 monetary damages for breach of NRS 116.1113 and wrongful foreclosure. The parties deem
6 it to be in their mutual benefit that these claims not be determined through litigation while the
7 underlying title claims between BANA and Thunder Properties, LLC remain pending.

8 8. **WHEREAS**, BANA and Esplanade desire that the running of any limitation
9 periods related to the breach of NRS 116.1113 and wrongful foreclosure claims be tolled and
10 that the limitation periods shall not run during the Tolling Period as defined below.

11 9. **WHEREAS**, the parties agree to toll the running of the limitation periods from
12 the commencement of the claims' filing until one (1) year following a final adjudication of the
13 claims between BANA and Thunder in the trial court and any appeal from the trial court's
14 determination of such claims (the "Tolling Period"), and agree to not assert any defenses
15 based on the running of the Limitations Period during the Tolling Period. Upon expiration of
16 Tolling Period, the Parties agree that the term of the Tolling Period shall not be included in
17 determining any Limitations Period.

18 10. **THEREFORE**, based upon the representations and agreements contained
19 herein, BANA and Esplanade hereby stipulate and agree that each of BANA's claims against
20 Esplanade be dismissed without prejudice, and each of Esplanade's counterclaims against
21 BANA be dismissed without prejudice, with each party to bear their own fees and costs.

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1 11. **NOW THEREFORE,** Esplanade's dismissal from this action
2 notwithstanding, Esplanade nevertheless agrees to voluntarily make its "person most
3 knowledgeable" available for any deposition and trial on the merits in this matter and to
4 further participate in requests for documents from any party in this matter, without requiring
5 the imposition of a subpoena.

6 Respectfully submitted this 29th day of June, 2018, by:

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8 ANGIUS & TERRY LLP

AKERMAN LLP

9
10 /s/ Michael W. McKelleb
11 Michael W. McKelleb, Esq. SBN 12040
12 9127 W. Russell Road, Ste. 220
13 Las Vegas, NV 89148
14 Attorneys for Defendants Esplanade at
15 Damonte Ranch HOA

/s/ Jamie K. Combs
Ariel E. Stern, Esq. SBN 18276
Jamie K. Combs, Esq. SBN 13088
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
Attorneys for Bank of America, N.A., as
Successor by Merger to BAC Home Loans
Servicing, LP fka Countrywide Home Loans
Servicing, LP

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19 **ORDER**

20 **IT IS SO ORDERED.**

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23 UNITED STATES DISTRICT JUDGE

24 **DATED:** July 2, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2018, service of the foregoing
**STIPULATION AND ORDER FOR DISMISSAL OF PLAINTIFF’S MONETARY
CLAIMS AGAINST DEFENDANT ESPLANADE AT DAMONTE RANCH AND
ESPLANADE AT DAMONTE RANCH HOMEOWNER’S ASSOCIATION’S
COUNTERCLAIMS AGAINST PLAINTIFF** was made via the Court’s electronic service
all parties registered therein through the Court’s official e-filing system.

/s/ Amy McConnell

An Employee of ANGIUS & TERRY LLP